

you that I confirm the arrangements set out in your A
abovesaid letter namely:—

- (a) The whole area now taken by Government was acquired by virtue of Notification No. 401 published in the Selangor Government Gazette on 26th July 1956.
- (b) That areas "A", "C" and "D" shown in the plan referred to in letter No. 16 in DOKL. Conf. No. 52/57 dated 6th May, 1958 were acquired under G.N. 401.
- (c) That no proceedings were ever taken in respect of area "B".
- (d) That the award made by the Collector of Land Revenue was at the rate of \$5,282 per acre and that your client's claim in respect of the area was at the rate of \$13,000 per acre.
- (e) That your client may make an additional claim under Section 29(i)(c) and/or (i)(d) of the Enactment in respect of severance and/or injurious affection.
- (f) That compensation at the rate of \$5,282 per acre had been paid on the 19th day of December, 1956 in respect of 250 acres.
- (g) That the total area of "A", "C" and "D" is 263.272 acres.
- (h) That your client will be paid further compensation at the rate of \$5,282 per acre on the additional 13.272 acres plus 6% interest from the 3rd December, 56.
- (i) That the Second acquisition proceedings would be withdrawn by Government and treated by both sides as never having occurred.

2. I have spoken to the Attorney-General and he agreed with the above arrangement."

From the record prepared by the Collector and, in particular, the two letters quoted above, it is clear that the Collector, upon taking legal advice, realised that he could not proceed to make a reference to Court on the basis of the award of November 27, 1956 which, according to such advice, was invalid. Thereafter it was sought to solve the problem by agreement to the effect that the whole area finally acquired by Government was to be deemed to have been acquired by virtue of the Notification No. 401 of July 26, 1956, and that the award by the Collector in respect of such area was at the rate of \$5,282 per acre, as against a claim of \$13,000 per acre by the applicants.

The additional acquisition under Notification 117 of March 6, 1958 cannot possibly be included in the award of November 27, 1956, or in the reference, as has been done. No award has ever been made in respect of this additional area. The only way it could have been included in that award was under the provisions of section 51, which was in the circumstances impossible.

I therefore hold that I have no jurisdiction under the Enactment to entertain the reference because it is not, in fact, a reference based upon the award of November 27, 1956, or any award. The Court has jurisdiction only under section 22. The parties themselves cannot, by an agreement to waive irregularities in procedure and to seek a reference, confer jurisdiction on the Court *dehors* the Enactment. Only Parliament can do so. Since this reference is expressly made under section 22 of the Enactment, there is only one proper course open to me, and I must decline to act.

I am fortified in my decision by the fact that it is in the best interests of all parties, and cannot but effect a considerable saving in time and costs.

The matter has reached this stage entirely by reason of the respondent's fault. The proper steps which should have been taken have not been taken. The remedy lay with him. I do not consider the applicant or his legal adviser are in any way to blame. In all the circumstances the appropriate order as to costs will be that the respondent pay the applicant costs of these proceedings.

I direct that the Assessors be paid \$100 each, under section 35, for the loss of their time.

Order accordingly.

Solicitors: *Shook Lin & Bok; Braddell & Ramani.*

GLADYS NUGAWELA v. SOON TECK FINANCE CO.

[A. C. J. (Buttrose J.) November 9, 1960]

[Singapore — Suit No. 14 of 1959]

Damages — Whether seizure of car was illegal and constituted trespass.

Bill of Sale — Loan of money on the security of a car — Purported sale of car followed by hire-purchase agreement — Bills of Sale Ordinance (Cap. 22).

Moneylenders Ordinance — Failure to comply with the provisions of the Ordinance.

The plaintiff in this case borrowed \$3,000 from the defendants on 6th August, 1957 and signed the hire-purchase proposal form and the hire-purchase agreement and a receipt for \$4,500 purporting to be the full purchase price for the Ford Motor Car paid to her by the defendant Company. The plaintiff signed those documents in blank with no particulars filled in, on the representation made to her by the defendants that they were a mere formality but had to be executed if the loan was to go through. These documents did not represent the real transaction between the parties, their intention being merely to create a security for money. The documents were not registered as required by the Bills of Sale Ordinance, (Cap. 22). The defendants seized the Ford motor car for breach of the conditions of the hiring agreement. Despite requests from the plaintiff, the defendant had refused to return the car and had retained it for a period of some 2½ years.

The defendants claimed by way of set-off a sum of \$1,425 being the balance of loan still outstanding and unpaid by the plaintiff. The evidence of the defendants' business manager was that they lent money to a number of their customers in precisely the same way as they did in this case.

Held: (1) the seizure by the defendants of the plaintiff's car was illegal and constituted a trespass and the plaintiff was entitled to damages;

(2) the defendants' claim to set-off must be dismissed, because they were carrying on the business of money lenders at the material time and that this was a moneylending transaction and unenforceable because of its failure to comply with the provisions of the Moneylenders Ordinance.

Cases referred to:—

- (1) *Madell v. Thomas & Co.* [1891] 1 Q.B. 230 at p. 234.
- (2) *Polaky v. S. and A. Services* [1951] 1 All E.R. 185 at p. 189.

ACTION FOR DAMAGES.

L. A. J. Smith for the plaintiff.

E. Barker for the defendant.

The facts and arguments appear sufficiently from the judgment.

Buttrose J.: In this action the plaintiff's claim against the defendants was for the return of a Ford motor car or \$5,000 its value and damages for its detention and conversion and also for trespass to it.

The facts were that the plaintiff's husband wanted a loan to enable him to go to Ceylon. He approached the defendants, a finance company, who agreed to lend the sum of \$3,000. As the security for the loan was to be the plaintiff's Ford motor car, it was agreed that the loan would be made to her. The plaintiff was at the time buying the car under a hire purchase agreement with Motor Traders Finance Co. Ltd., and there was an amount of \$1,199 still to be paid under it.

The defendant company drew a cheque for \$3,000 in favour of the plaintiff which she endorsed and returned to the defendants who cashed it out of their own funds. Out of this sum the defendant company was instructed to retain \$1,199 and pay it to Motor Traders Finance Co. Ltd. which they subsequently did and \$1,581 was handed in the plaintiff's presence to her husband in cash. The defendant company retained \$210 as commission on the deal and \$10 for documents. It was admitted by the defendants at the trial that they lent the \$3,000 to the plaintiff on the security of her car.

Now this transaction was carried out by means of certain documents including a hire purchase proposal form and a hire purchase agreement which would have been used had this been one of the ordinary transactions whereby finance companies finance the purchase of cars in the same way as Motor Traders Finance Co. Ltd. financed the plaintiff's purchase of the Ford motor car. The difference between that transaction and this is that the defendants here were purporting to buy the car not from a dealer but from the plaintiff herself.

The evidence of Lim Soon Guan who was the business manager of the defendants at the material time was that he informed the plaintiff and her husband that the only way the loan could be put through was for the plaintiff to sell the car to them and that they agreed to this course. The evidence of the plaintiff and her husband which I accept was that no mention of having to sell the car to the defendants was ever made to them. It is true that the plaintiff signed the hire purchase proposal form and the hire purchase agreement and a receipt for \$4,500 purporting to be the full purchase price for the Ford motor car paid to her by the defendant company.

I am quite satisfied on the evidence and find as a fact that she signed those documents in blank with no particulars filled in, on the representation made to her by the defendants that they

were a mere formality but had to be executed if the loan was to go through. I am also satisfied that these documents were signed by her on the 6th August 1957 when the loan was made and that the particulars were typed in later by the defendants and the documents dated the 10th August 1957. I am fortified in my findings of fact by the letter dated the 20th August 1957 from the plaintiff to the defendants which reads as follows:—

"Mrs. N. G. Nugawela c/o

12, Rambai Road,
Singapore, 15
20th August, 1957.

REGISTERED POST

Messrs. Soon Teck Finance Co.,
173A, South Bridge Road,
Singapore.

Gentlemen,

I have received a Hire Purchase Agreement, a receipt for \$1,500, which I have not paid to you and I am rather bewildered by the contents of the agreement which I signed blank and received a sum of money which was calculated as follows i.e.

Amount which you lent me against the Car was agreed at \$3,000.00. You deducted a sum of \$210.00 as commission leaving a balance of \$2,790.00 and again a sum of \$10.00 for documents left a sum of \$2,780.00. I signed on the reverse of a cheque which you drew in my favour for \$3,000.00 and you gave a sum of money in CASH of only \$1,581.00 retaining a sum of \$1,199.00 which amount was owing to Motor Traders Finance Co., Ltd., on the existing hire-purchase account and promised me that you would settle them. I have been receiving letters from Motor Traders Finance Co., re the instalments and on telephoning you was informed that you had settled them. I do not understand as to why they should write to me at all if you have settled them of the amount of \$1,199.00 which you retained? Please explain per return post and I would be obliged if the receipt of full settlement is sent to me.

I note that 15 instalments of \$225.00 should be paid to you which is as agreed, but cannot understand matters as explained in paragraph two of this letter. Please confirm that I have to pay only \$225.00 p.m. and that you have settled Motor Traders Finance for they have written to me on the 15th instant, though our transaction referred above was finalised on the 6th August, 1957.

Thanking you and hoping that you would clear my doubts and all this confusion at an early date.

Yours faithfully,
Sd. N. G. Nugawela."

No written reply was ever received by the plaintiff to this letter but there was a telephone conversation between the defendant company and the plaintiff's husband in which the defendants said the failure to pay Motor Traders Finance Co. Ltd. was due to an oversight and they would do so at once, that the receipt for \$1,500 was a mere formality and only \$3,000 was to be paid by instalments.

Now the importance of that letter was that it was written just 14 days after the transaction was finalised, nine months before the car was repossessed and some seventeen months before these proceedings were commenced. In the view I take it represents a true and unvarnished account of what took place uncoloured by any considerations of possible seizure or litigation

arising. Lim Soon Guan the defendants' only witness admitted that the 2nd and 3rd paragraphs of the letter were true and correct with the one exception that the transaction he maintained was finalised on the 10th and not the 6th August 1957.

On the 31st May 1958 the defendants seized the car for non payment of instalments under the hire purchase agreement and retained it and as a result the present proceedings were instituted.

The substantial question for decision in this case is whether or not the hire purchase agreement dated the 10th August 1957 whereby the defendants purported to let on hire to the plaintiff a Ford motor car is a bill of sale within the Bills of Sale Ordinance (Chapter 22) section 3 and therefore void under section 4 of that Ordinance as being unregistered.

What I have to determine is whether this transaction is a genuine sale by the plaintiff to the defendants and a genuine reletting by them back to the plaintiff on hire purchase terms or whether the transaction though taking that form is nothing more than a loan of money on the security of the car. In the words of Lord Esher M.R. in *Madell v. Thomas & Co.*⁽¹⁾

"... the Court is to look through or behind the documents and to get at the reality; and if in reality the documents are only given as a security for money, then they are bills of sale."

As was indicated by Lord Goddard C.J. in *Polsky v. S. and A. Services*⁽²⁾, at page 189 one of the most satisfactory ways of deciding what the true nature of the transaction was is to see whether the documents themselves accurately set out the deal between the parties as it took place, or whether the facts, or some of them, therein recorded do not truly represent that which happened but give the transaction an innocent appearance.

Now the plaintiff signed a receipt for \$4,500 which on the face of it purported to be the full purchase price paid by the defendant company to her for the Ford motor car. She, in fact, only received \$3,000.

The hire purchase proposal form states the cash price of the car to be \$4,500 less an amount of \$1,500 payable on the execution of the hire purchase agreement. The defendant company signed a receipt for \$1,500 purporting on the face of it to be for payment of Option Money under the hire purchase agreement by the plaintiff. No such payment of \$1,500 was ever made by the plaintiff.

In addition the clear evidence of the defendant company's business manager was that he lent \$3,000 to the plaintiff on the security of her car.

In my opinion this transaction was nothing more or less than a loan of \$3,000 by the defendants to the plaintiff on the security of her Ford motor car and as Lord Goddard C.J. pointed out in *Polsky's case* is exactly the class of transaction at which the Bills of Sale Acts strike.

In these circumstances, the seizure by the defendants was illegal and constituted a trespass. Despite requests by the plaintiff, the defendants have refused to return the car and have retained it ever since—a period of some 2½ years. It was admitted that the value of the motor car at the date of the seizure was \$5,000. In addition, the plaintiff has been deprived of the use of the car during this period. Furthermore, there is the question of exemplary damages to be considered if the manner of the trespass justifies them.

Now, the undisputed facts with regard to the seizure of the car as these:—

On the 13th May the defendants wrote to the plaintiff setting out a statement of her account with them and advising her that unless they received her cash remittance for two instalments by the 31st May 1958 they would be compelled to repossess the car without further warning.

On the 31st May which was a Saturday at about 5 o'clock in the afternoon the defendants repossessed the car and the plaintiff's evidence with regard to the manner of the seizure was not challenged.

The fact was that the plaintiff's husband, who was in Penang at the time, sent a telegraphic money order for \$225 to the defendant company on the 30th May. The defendants admitted receiving it on the 31st May but apparently were not aware who sent it. The plaintiff's husband also wrote to the defendants on the 30th May confirming the sending of the money order but the defendants denied receiving this letter on Saturday the 31st. According to the evidence of their business manager Lim Soon Guan, they received it "maybe on Monday, Tuesday or Wednesday" of the following week. His evidence was that if he had known that the money order was from the plaintiff's husband, they would not have seized the car. Furthermore, he said they had on a previous occasion given two months grace and on the plaintiff's husband paying one month's instalment they did not press the matter as they did not want to be too strict with him. This, in my opinion, affords some support to the evidence of the plaintiff's husband, which I accept, that he was told by the defendants at the time of transaction that if he failed to pay instalments they would only seize the car after a period of two months and 7 days which was their usual practice.

Notwithstanding the plaintiff's assurance to the defendants' representatives when they arrived to seize the car, that on the previous night her husband, who was in Penang, had phoned her that he had sent a telegraphic money order to the defendants for \$225, she was informed that they knew nothing about it and had come to seize the car.

The plaintiff then enquired as to how they could seize the car when her husband had already sent \$225, and she asked them to enquire from their office but was told that it was no use as it was a Saturday and the office closed at 1 p.m. The plaintiff then suggested that their employer

should be phoned at his residence. A phone call was made to some one, the only result of which apparently was that the plaintiff was told to hand over the keys of the car as otherwise it would be removed by force.

The plaintiff, not surprisingly, was frightened and distressed over the incident and as she did not want the car damaged handed over the keys and they drove off.

In any view of the case the seizure was not only ill-advised but premature. It is true it was a Saturday afternoon but that was no fault of the plaintiff's and I am satisfied that no real or genuine attempt was made by the defendants to verify the plaintiff's statement that her husband had already forwarded a remittance of \$225. The defendants employed what their business manager described as a "professional seizer" who was paid \$40 a seizure. He appeared to be in a considerable hurry and anxious to effect the seizure at all costs and I can only describe his behaviour as high-handed if not insolent.

The first that the plaintiff knew that the car was to be seized was on looking out of her window on hearing a knock at the door she saw the professional seizer sitting, as she put it, very comfortably in the driving seat of her car which was parked right outside her front door. During the ensuing conversation the plaintiff had with his male companion, she was interrupted by the professional seizer calling out peremptorily to him to get the keys and come quickly. By this time a large crowd had gathered round and the plaintiff, again not surprisingly, was very embarrassed and ashamed to show her face.

What I have to determine is what is a reasonable figure to award in respect of the loss of the use of the car to the plaintiff and by way of exemplary damages which the manner of the seizure in this case warrants. This is always a difficult matter to assess and the evidence with regard to loss of use is not as clear as it might be. Giving the best consideration I can to the matter I consider that an award of \$4,000 would be reasonable in the circumstances.

There remains the question of the set-off claimed by the defendants amounting to \$1,425 being the balance of the loan for \$3,000 still outstanding and unpaid by the plaintiff. This was the subject of an application to amend by the defendant company made at the trial which I allowed. After the close of the evidence and after the defendants' Counsel had concluded his address, Counsel for the plaintiff made an application to amend by pleading that the set-off was unenforceable under and by virtue of the provisions of the Moneylenders Ordinance. This application was opposed because of its lateness but I allowed it. No application was made by the defendants' Counsel for an adjournment and although I invited him to address further argument on the merits of the amendment he declined to do so. Be that as it may, the Court in any event, so it seems to me, is bound to take notice of a matter such as this whether pleaded

A or not and will not seek to enforce a contract which is by Statute rendered unenforceable.

The evidence of the defendants' business manager was that they lent money to a number of their customers in precisely the same way as they did in this case. I am satisfied that the defendants were carrying on the business of moneylenders at the material time and that this was money lending transaction and unenforceable because of its failure to comply with the provisions of the Moneylenders Ordinance. The defendants' claim to set off the sum of \$1,425 fails and must be dismissed.

C In the result, therefore, the plaintiff is entitled to the value of the car which at the date of seizure was admitted by the defendant company to be \$5,000 and to \$4,000 damages.

There will be judgment accordingly for the plaintiff for \$9,000 and costs.

Judgment for the plaintiff.

Solicitors: L. A. J. Smith; Lee & Lee.

Re UNITED MARINE SUPPLY CO.

[O. C. J. (Rose C.J.) November 16, 1960]

[Singapore — In Bankruptcy No. 298 of 1960]

E *Bankruptcy — Notice — Claim more than debt due — Bankruptcy Ordinance (Cap. 11), s.131.*

The claim in this case was for balance due on a final judgment and erroneously included a sum of \$50 which had been accepted by the creditor as payment towards the judgment debt.

Held: the defect cannot be cured by invoking section 131 of the Bankruptcy Ordinance.

F *Case referred to:—*

(1) *In re a Debtor* [1908] 2 K.B. 684.

BANKRUPTCY.

Ten Chin Yong for the debtor.

C. S. Wu for the creditor.

G *Rose C.J.:* The debtor here in opposing this petition for a Receiving Order being made against his firm contends that the bankruptcy notice, on which the act of bankruptcy to support the petition is based, is bad in that it is for a claim which is more than the debt due. The claim is for balance due on a final judgment of the High Court and erroneously includes a sum of \$50 which had been accepted by the creditor as payment towards the judgment debt.

H Counsel for the debtor relies on the case of *In re a Debtor*,⁽¹⁾ to support his contention that the defect in the bankruptcy notice is not a mere formal defect or irregularity which could be rectified by the Court. In that case, the mistake was in the calculation of interest and Cozens-Hardy M.R. held that "both on principle and on authority it seems to me that when you find a notice including in the claim for payment a sum which is not due from the debtor at all, that is not a mere formal defect within section 143, subsection (1)" of the Bankruptcy Act, 1883.